

## REMARKS

As noted, the present paper supplements a response filed earlier today, June 1<sup>st</sup>. (hereafter, "the earlier response"). Applicants respectfully request that Examiner Kumar give full consideration to both responses, filed on the same day, as constituting a complete reply to the Office Action issued on March 1, 2010.

### **I. Status of the Claims**

Claims 2, 3, 5, 7, 8, and 10-13 were cancelled previously. Claim 1 has been amended to delete the recitation of "wherein each of (i) and (ii) is by way of improved rooting efficiency of scions for rooting."

Applicants acknowledge the finality of the outstanding Office Action. The claim revisions introduce no impermissible new matter and require no additional search, but they do place the application in condition for allowance or, at least, in better condition for appeal. Thus, Applicants request entry of this amendment. Upon entry, claims 1, 4, 14, and 15 will be pending.

### **II. Rejection of Claims under 35 U.S.C. §103(a)**

Claims 1, 4, and 14 are rejected for alleged obviousness over Kasuga *et al.*, *Nature Biotechnology* 17: 287-91 (1999), in view of U.S. patent No. 5,584,140 to Byrne *et al.* Claim 15 is rejected over Kasuga in view of Byrne and Dalton *et al.*, *Plant Science* 132: 31-43 (1998). Applicants respectfully traverse each rejection.

In support of the notion that propagation by scions or cuttings is not universally desirable (see earlier response), Applicants submit with this supplemental paper the publications of Jutta *et al.*, *J. Experimental Botany* 56:2095-2105 (2005) (Exhibit A), and Liesebach *et al.*, *Plant Cell, Tissue and Organ Culture* 79: 239-247 (2004) (Exhibit B). Jutta describes an alternative approach to propagate *Arabidopsis* by hormone-induced adventitious rooting (see abstract). More particularly, Jutta teaches that "[a]dventitious root formation has many practical implications in horticulture and

agronomy and there is a lot of commercial interest because of the many plant species that are difficult to root" (at page 2095, right column, lines 23-26).

Additionally, Liesebach indicates that propagation by cutting is not applicable to all plant species, as illustrated by *Salix caprea*. Thus, Liesebach states that, "[s]ince it was not possible to root sufficient clonal plants by conventional cutting propagation, the applicability of tissue culture methods was tested" (abstract, lines 2-4).

The attachments thus belie the Examiner's overgeneralization with respect Byrne's method of propagation by cutting, as discussed in the earlier response. For this reason, too, withdrawal of the rejection is warranted.

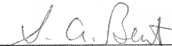
#### CONCLUSION

Applicants renew their request for an early indication of allowability in this case. As before, Examiner Kumar is invited to contact the undersigned, should he feel that any issue warrants further consideration.

Respectfully submitted,

Date June 1, 2010

By



FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 672-5404  
Facsimile: (202) 672-5399

Stephen A. Bent  
Attorney for Applicant  
Registration No. 29,768

The Commissioner is hereby authorized to charge any additional fees, which may be required under 37 C.F.R. §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany this response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account. If any extension is needed for timely acceptance of submitted papers, then applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of the relevant fee(s) from the deposit account.